No. 03-6696

MAR 29 2004

IN THE

Supreme Court of the United States

YASER ESAM HAMDI AND ESAM FOUAD HAMDI,
AS NEXT FRIEND OF YASER ESAM HAMDI,
Petitioners,

v.

DONALD H. RUMSFELD, SECRETARY OF DEFENSE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF *AMICUS CURIAE* EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND IN SUPPORT OF RESPONDENTS

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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INTEREST OF *AMICUS CURIAE*[1]

Eagle Forum Education and Legal Defense Fund ("EFELDF") is a nonprofit organization founded in 1981. For more than twenty years it has defended American sovereignty. EFELDF promotes adherence to the U.S. Constitution and has repeatedly opposed illegal immigration and erosion of our national borders. EFELDF consistently stands

[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus*, its members, or its counsel make a monetary contribution to the preparation or submission of this brief.

in favor of enforcing immigration laws and defending the integrity of the American citizenship.

Amicus has a direct and vital interest in the issues presented to this Court based on its longstanding defense of principles of American sovereignty and citizenship.

SUMMARY OF ARGUMENT

Petitioner Yasser Esam Hamdi was captured as an enemy combatant during the United States military operation in Afghanistan, and then interviewed by United States interrogators. Michael H. Mobbs, Special Adviser to the Undersecretary of Defense for Policy, signed an affidavit dated July 24, 2002, recounting what Hamdi said during the interview. According to the affidavit, Hamdi identified himself as a Saudi citizen who had been born in the United States. Now he contradicts that by claiming to be a citizen of the United States, based merely on a birth certificate showing that he was born in Baton Rouge, Louisiana to Saudi Arabian parents.[2] But "[t]he inestimable heritage of citizenship is not to be conceded to those who seek to avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed." *Chin Bak Kan v. United States*, 186 U.S. 193, 200 (1902). There is no evidence of his parents intending to settle in the United States or even having a right to do so. Hamdi resided in Afghanistan when captured; his father, Esam Fouad Hamdi, joined this action from his country of Saudi Arabia.

Section 1401(a) of Title 8 of the United States Code defines a citizen to include "a person born in the United States, and subject to the jurisdiction thereof." This uses the same language as the Citizenship Clause of the Fourteenth Amendment. But there is no evidence the petitioner Hamdi

[2] http://news.findlaw.com/hdocs/docs/terrorism/hamdirums61102pet.pdf

or his parents ever consented to jurisdiction of the United States. In fact, all evidence is to the contrary. Apparently neither petitioner Hamdi nor his parents sought to settle in the United States or renounce their Saudi Arabian citizenship. *See Hamdi v. Rumsfeld*, 316 F.3d 450, 460 (4th Cir. 2003). All evidence is that they retained allegiance to the government of Saudi Arabia. The facts and law militate against American citizenship for petitioner Hamdi.

Why, then, would there be any presumption that petitioner Hamdi is an American citizen? This case should be remanded for a determination on that threshold issue. Citizenship cannot be presumed. Granting automatic citizenship to Hamdi would confer it to millions of children of illegal aliens, and offspring of travelers who arrange to give birth in the United States for the sole purpose of attaining citizenship. Hamdi is not entitled to citizenship simply because he was born in a hospital in Louisiana during a sojourn here by his foreign parents. If this Court assumes that Hamdi possesses citizenship here, then a cautionary warning is appropriate to preclude application to other cases.

ARGUMENT

Citizenship, and all the rights and obligations that it entails, is not solely a function of place of birth. Ever since the Roman Empire, citizenship has been an honor granted to those who earn it, by inheritance or deed. St. Paul held Roman citizenship when most of his peers, born in the same location, did not. St. Paul invoked his citizenship at an opportune moment to stop an injustice: "Is it legal for you to flog a Roman citizen who is uncondemned?" Acts 22:25 (NRSV). Citizenship has always been a privilege, revocable by the sovereign, rather than a birthright. "Throughout history, forfeiture of citizenship and the corollary practices of banishment and exile have been used as punishment. In the

Roman Empire, when people lost their freedoms, they 'necessarily lost . . . citizenship' as well. For example, a Roman sold into slavery as an insolvent debtor, or condemned to the mines for his crimes as servus poenae, suffered not just a loss of his freedom, but a loss of citizenship as well. Similarly, banishment was a weapon in the English legal arsenal for centuries." J.M. Spectar, *cited infra* Point II, at 280.

There is no precedent for the claim, implicit in this case, that physical location of birth alone establishes citizenship. Citizenship must be far more than that, transcending the vagaries of chance and manipulation. At a minimum, it requires consent by the sovereign. As discussed below, the Fourteenth Amendment embodies the consensual meaning of citizenship, as do rulings of this Court. Dire consequences await any dilution of citizenship based on the superficiality of physical location.

I. THERE IS NO LEGITIMATE CLAIM TO BIRTHRIGHT CITIZENSHIP FOR FOREIGNERS UNDER THE FOURTEENTH AMENDMENT.

Birth in the territory of the United States has never been an absolute entitlement to citizenship. The Fourteenth Amendment does not extend to children born to alien parents at war with the United States, nor to the children of diplomatic agents, American Indians, or illegal aliens. Its Citizenship Clause extends to "[a]ll persons born or naturalized in the United States, **and subject to the jurisdiction thereof**." U.S. Const. Amend. XIV (emphasis added). It is not the physical location of birth that defines citizenship, but the express or implied consent to jurisdiction of the sovereign. That consent is lacking in many important situations, perhaps including the one here, and the foregoing exclusions must be preserved in the disposition of this case.

This Court has recognized and enforced the jurisdictional requirement of the Citizenship Clause on several occasions. An American Indian did not automatically receive citizenship under this Clause when born into a tribe in the United States, for example. *See Elk v. Wilkins*, 112 U.S. 94 (1884). "Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States, are no more 'born in the United States and subject to the jurisdiction thereof,' within the meaning of the first section of the Fourteenth Amendment, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations." *Id.* at 102. The logic of this holding applies with equal force to visitors or aliens who remain loyal to foreign powers.

The common law in the British Empire recognized that offspring born to enemies in hostile occupation of British territory had no right to British citizenship, nor do the offspring of diplomatic agents. *See United States v. Wong Kim Ark*, 169 U.S. 649, 657-58 (1898). The Fourteenth Amendment did not change this. "Of course, **the mere physical fact of birth in the country does not make these children citizens of the United States**, inasmuch as they were at that time children of a duly accredited diplomatic representative of a foreign state. This is fundamental law and within the recognized exception not only to the Constitutional provision relative to citizenship, Amendment Article 14, Section I, but to the law of England and France and to our own law, from the very first settlement of the Colonies." *In Re Thenault*, 47 F. Supp. 952, 953 (D.D.C. 1942) (emphasis added).

The purpose behind the jurisdictional requirement of the Citizenship Clause is plain enough from its text, but is also

reinforced by the comments of its sponsor. Senator Jacob Merritt Howard of Michigan observed that the Citizenship Clause was "simply declaratory of what I regard as the law of the land already, that every person born within the limits of the United States, and subject to their jurisdiction, is by virtue of natural and national law, a citizen of the United States." Cong. Globe, 39th Cong., 1st Sess. 2890 (1866). He then emphasized that the Clause did not include people born on American soil to foreigners. "This will not, of course, include persons born in the United States who are foreigners, aliens, who belong to the families of ambassadors or foreign ministers accredited to the Government of the United States, but will include every other class of persons." *Id.*

Senator Edgar Cowan of Pennsylvania reiterated this basic theme. "It is perfectly clear that the mere fact that a man is born in the country has not heretofore entitled him to the right to exercise political power." *Id.* He directly addressed the problem of illegal immigration, despite being less of a concern then. "I do not know that there is any danger to many of the States in this Union; but is it proposed that the people of California are to remain quiescent while they are overrun by a flood of immigration. . . ? Are they to be immigrated out of house and home by Chinese? I should think not. . . . As I understand the rights of the States under the Constitution at present, California has the right, if she deems it proper, to forbid the entrance into her territory of any person she chooses who is not a citizen of some one of the United States. . . . I wish to be understood that I consider those people to have rights just the same as we have, but not rights in connection with our Government. If I desire the exercise of my rights, I ought to go to my own people, people of the same beliefs and traditions, and not thrust myself in upon a society of other men entirely different in all those respects from myself. I would not claim that right." *Id.* at 2890-91.

The Chairman of the Senate Judiciary Committee, Lyman Trumbull of Illinois, left no doubt that the jurisdictional condition in the Citizenship Clause adds a significant limitation on citizenship. Quoting the Clause—"all persons born in the United States, and subject to the jurisdiction thereof, are citizens"—Senator Trumbull added that it "means 'subject to the complete jurisdiction thereof.' . . . [Are] the Navajo Indians [] subject to the complete jurisdiction of the United States? By no means. We make treaties with them. . . . It cannot be said of any Indian who owes allegiance, partial allegiance if you please, to some other Government . . . that he is "subject to the jurisdiction of the United States." . . . It is only those persons who come completely within our jurisdiction, who are subject to our laws, that we think of making citizens; and there can be no objection to the proposition that such persons should be citizens." *Id.* at 2893.

Fundamental principles of statutory interpretation require that the term "jurisdiction" be construed in the context of "citizenship", which means far more than physical presence. *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961) ("The maxim noscitur a sociis, a word is known by the company it keeps, while not a inescapable rule, is often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of Congress."); *Massachusetts v. Morash*, 490 U.S. 107, 115 (1989) (noting that a term should not be viewed "in isolation but in light of the words that accompany it and give [it] meaning"). The jurisdictional limitation on citizenship ensures that children of enemy combatants do not automatically become citizens of the United States by virtue of birth on American soil; nor do offspring of illegal aliens or foreign visitors. This Court has held that the Citizenship Clause excludes "children born of alien enemies in hostile occupation" of the United States, and "children of diplomatic representatives of a foreign State." *Wong Kim Ark*, 169 U.S.

at 682. Such interpretation comports with the language of the Clause and with common law.

In *Wong Kim Ark* this Court, quoting President Grant's Secretary of State Hamilton Fish, stated that "[t]he qualification, 'and subject to the jurisdiction thereof,' was probably intended to exclude the children of foreign ministers, and of other persons who may be within our territory **with rights of extraterritoriality**." *Id.* at 690 (quoting 2 Whart. Int. Dig. p. 394, emphasis added). The citizenship therefore does not hinge entirely on "parentage", but requires submission to the jurisdiction of the sovereign. Location of birth is not the *sine qua non* of citizenship; consent by the sovereign and the parties (or parents) is. Michigan Governor George Romney ran for president in 1968 as a natural-born citizen. He was born in Mexico, but his parents were U.S. citizens and the location of the birth is not controlling. Similarly, John McCain ran in 2000 as a natural-born citizen. He was born in the Panama Canal Zone, a U.S. territory, but his parents were U.S. citizens consenting to American jurisdiction.

In *Wong Kim Ark*, this Court did find birthright citizenship for a child of Chinese aliens subject to the Chinese Exclusion Act. "Chinese persons, born out of the United States, remaining subjects of the Emperor of China, and not having become citizens of the United States, are entitled to the protection of and owe allegiance to the United States, **so long as they are permitted by the United States to reside here; and are 'subject to the jurisdiction thereof,' in the same sense as all other aliens residing in the United States**." 169 U.S. at 694 (emphasis added). This holding relied on the fear that "[t]o hold that the Fourteenth Amendment of the Constitution excludes from citizenship the children, born in the United States, of citizens or subjects of other countries, would be to deny citizenship to thousands of persons of English, Scotch, Irish, German or other European parentage, who have always been considered and treated as citizens of

the United States." *Id.* Neither the holding nor rationale applies to illegal aliens, mere visitors or those who reject the sovereign authority of the United States. *See Smith v. United States*, 151 U.S. 50, 56 (1893) (denying citizenship where "it appears that the Indian was but temporarily a resident of a State, the length of his residence not being shown, and that he had done nothing to indicate his intention to sever his tribal relations").

This Court has held (5-4) that the Equal Protection Clause of the 14th Amendment requires providing free public education to the children of illegal aliens unless there is a "substantial state interest" not to. *Plyler v. Doe*, 457 U.S. 202, 230 (1982). But Justice Powell emphasized, in concurrence, that "the power to deport is exercised infrequently by the Federal Government" and "the additional expense of admitting these children to public schools might fairly be shared by the Federal and State Governments." *Id.* at 241 (Powell, J., concurring). Justice Powell's concurrence, and the opinion of the dissenting four Justices, are entirely consistent with the power of the sovereign to deport the entire family of illegal aliens, implicitly including those born here. *Id.* at 236-54 (Powell, J., concurring, and Burger, C.J., dissenting). Ironically, the majority opinion in *Plyler* mandated publicly funded education because it "is the very foundation of good citizenship," without observing that the subjects were not citizens. *Id.* at 223. The dissent retorted that "[s]urely if illegal alien children can be identified for purposes of this litigation, their parents can be identified for purposes of prompt deportation." *Id.* at 242 n.1 (Burger, C.J., dissenting). Deportation remains a largely unexercised power of the sovereign to this day. "Nor is it plausible for plaintiffs to fear that the federal government (*i.e.*, the Department of Justice or the Department of Homeland Security) would be hostile to plaintiffs or seek to deport them based on learning that they are plaintiffs in this suit" to overturn exclusion of

aliens from Virginia state colleges. *Jane Doe 1 v. Merten*, 219 F.R.D. 387, 395 (E.D. Va. 2004). Unexercised the power is, but not waived.

II. CITIZENSHIP MUST BE CONSENSUAL RATHER THAN ASCRIPTIVE.

The legal concept of citizenship has always been based on consent. Justice Joseph Story wrote in his Commentaries that:

> The doctrine maintained by many eminent writers upon public law in modern times is, that civil society has its foundation in a voluntary consent or submission; and, therefore, it is often said to depend upon a social compact of the people composing the nation. And this, indeed, does not, in substance, differ from the definition of it by Cicero, Multitudo, juris consensu et utilitatis communione sociata; that is, (as Burlamaqui gives it,) a multitude of people united together by a common interest, and by common laws, to which they submit with one accord.

Douglas G. Smith, "Citizenship and the Fourteenth Amendment," 34 San Diego L. Rev. 681, 697 (1997) (quoting 1 Joseph Story, Commentaries on the Constitution of the United States 225-26 (Thomas M. Cooley ed., 4th ed. Little, Brown, and Co. (1873), footnotes omitted)).

John Locke's theory of social compact, underlying the Declaration of Independence, emphasized that citizenship must ultimately be based on consent. "Philosopher John Locke . . . maintained that a child did not attain citizenship until s/he could legitimately give consent upon reaching adulthood." J.M. Spectar, "To Ban or Not to Ban an American Taliban? Revocation of Citizenship & Statelessness in a Statecentric System," 39 Cal. W. L. Rev. 263, 276 n.89 (Spring, 2003) (citing Peter H.-Schuck & Rogers M. Smith, Citizenship Without Consent, Illegal Aliens in the American

Polity 23-24 (1985)). Consensual citizenship is the essential basis of the social compact between individual and the sovereign. Then, when the sovereign later exercises its jurisdiction, "a citizen cannot complain, because he has voluntarily submitted himself to such a form of government." *United States v. Cruikshank*, 92 U.S. 542, 551 (1876). Where that voluntary submission is lacking, so is citizenship.

Denying American citizenship to the offspring of ambassadors and diplomatic agents confirms that the touchstone is consent, not physical location. *See Wong Kim Ark*, quoted and discussed *supra* Point I. The Ninth Circuit elaborated on the denial of citizenship to persons born to diplomatic agents. *See Rabang v. INS*, 35 F.3d 1449 (9th Cir. 1994), *cert. denied*, 515 U.S. 1130 (1995). That court adhered to the historic exceptions to conferring citizenship upon domestic birth: (1) when the father is an alien enemy and the child is born during hostile occupation and (2) when the father is an "ambassador or other diplomatic agent accredited to the crown by the sovereign of a foreign state ... (though born within the British dominions)." *Id.* at 1457 n.5 (quoting *Wong Kim Ark*, 169 U.S. at 658). The rationale for these exclusions applies to foreigners also. "The reason for these exceptions is that a person born under either of these circumstance **does not owe allegiance to the sovereign nation in whose territory that person is born**." 35 F.3d at 1457 n.5 (emphasis added).

The *Rabang* court denied citizenship to persons born in the Philippines while part of the territorial United States. The reason for the denial is that the Philippines had become a sovereign power. "The Philippine Islands are now a sovereign nation. Supreme Court precedent compels a conclusion that persons born in the Philippines during the territorial period were not 'born . . . in the United States,' within the meaning of the Citizenship Clause of the Fourteenth Amendment, and are thus not entitled to citizenship by birth."

Id. at 1454. The panel majority rejected the view of the dissent that "the Fourteenth Amendment [created] the inviolability of the fundamental right to citizenship by birth." *Id.* at 1466 (Pregerson, J., dissenting).

It is merely historical accident that citizenship became closely associated with territory in England, where ligeance was based entirely on geography. *See Calvin's Case*, 77 Eng. Rep. 382 (1608) (ligeance is based on the relationship "between lord and tenant that holdeth by homage," and on this basis the "King is called the liege lord of his subjects"). Where that homage (and thus territorial connection) was lacking, there was no birthright citizenship. *See id.* at 384 ("for if enemies should come into the realm, and possess town or fort, and have issue there, that issue is no subject of the King of England though he be born upon his soil"); *see id.* at 399 ("if any of the King's ambassadors in foreign nations have children . . . they are natural born subjects [of England], yet they are born out of the Kings dominion").

The extensive litigation concerning American Indians illustrates that consent rather than ascription is what animates citizenship. Indians did not receive citizenship until conferred by congressional acts in 1887, 1901 and 1924, long after ratification of the Fourteenth Amendment. *See* General Allotment Act of 1887, ch. 119, 24 Stat. 388 (codified as amended at 25 U.S.C. §§ 331-34, 339, 341-342, 348-349, 354 (1994)); Act of Mar. 3, 1901, ch. 853, 31 Stat. 1155; Act of June 2, 1924, Pub. L. No. 68-175, 43 Stat. 253. The Court applied the jurisdictional condition to deny citizenship to American Indians in *Elk v. Wilkins*, discussed *supra* Point I. There the Court affirmed that an Indian born into a tribe in the United States, who had voluntarily separated from his tribe to live with other American citizens, was not himself a citizen of the United States under the Citizenship Clause. 112 U.S. 94, 109 (1884). The real reason is clear: the requisite

consent "to the jurisdiction thereof" was lacking under the Citizenship Clause. U.S. Const. Amend. XIV.

This Court's teachings on revocation of citizenship illustrate how essential consent is, and how irrational automatic citizenship based on location of birth would be. *Afroyim v. Rusk*, 387 U.S. 253 (1967) In *Afroyim*, this Court held that revocation of citizenship must be consensual rather than by ascription, using logic that applies with equal force to the granting of citizenship. "We reject the idea . . . that . . . Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent. This power cannot . . . be sustained as an implied attribute of sovereignty possessed by all nations. Other nations are governed by their own constitutions, if any, and we can draw no support from theirs." *Id.* at 257. All nine Justices in that split decision implicitly embraced the consensual underpinnings of citizenship. Citizenship lacks meaning without consent, and there is no principle supporting birthright citizenship.

III. BIRTHRIGHT CITIZENSHIP FOR FOREIGNERS WOULD HAVE ENORMOUSLY ADVERSE CONSEQUENCES.

The large and growing population of illegal aliens and even foreign visitors amplifies the significance of birthright citizenship. By the government's own estimates, in January 2000 there were seven million illegal aliens living in the United States. "Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000," Office of Policy and Planning, U.S. Immigration and Naturalization Service 1 (2003).[3] The number is surely even higher today, as illegal immigration is continuing to accelerate. In a mere six years, from 1994 to 2000, gov-

[3] http://uscis.gov/graphics/shared/aboutus/statistics/Ill_Report_1211.pdf

ernment estimates of the numbers of illegal aliens nearly doubled. See U.S. General Accounting Office, Illegal Aliens: National Net Cost Estimates Vary Widely 4 (1995) (estimating illegal alien population at four million in 1994).

"We have noted before the dimensions of the immigration problem in this country," Justice Powell wrote twenty years ago. *Immigration & Naturalization Service v. Delgado*, 466 U.S. 210, 222 (1984) (Powell, J., concurring) (citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975) and *United States v. Martinez-Fuerte* 428 U.S. 543, 551-53 (1976)). "Recent estimates of the number of illegal aliens in this country range between 2 and 12 million, although the consensus appears to be that the number at any one time is between 3 and 6 million. One of the main reasons they come—perhaps *the* main reason—is to seek employment." 466 U.S. at 222 (footnote omitted). If birthright citizenship implicitly becomes a constitutional requirement here, then the problems will greatly multiply. It would create an unprecedented incentive to break the law. The Constitution should not be construed to induce lawlessness.

Nor should an easily manipulated fact—place of birth—take precedence over the substantive values inherent in citizenship. Non-citizens owing allegiance to foreign powers should not have a right to endow their children with citizenship simply by crossing our border to give birth. "Gabriela Nicolas felt her first contractions while at a downtown San Diego movie theater. She could have easily rushed home to Tijuana, Mexico. But that wasn't the plan. She drove to a hospital in a San Diego suburb, where she gave birth to Miguel Angel about 12 hours later." Anna Gorman, "Crossing border for birth rights; Parents pursue U.S. citizenship," *Chicago Tribune*, April 30, 2003, 3A. Why? "By being born in the United States, Miguel has something that his parents don't: American citizenship. 'I wanted him to have more choices,' said Nicolas, a

psychologist who also had her first child in the United States. Women have long been crossing the border from Mexico to give birth, pursuing the age-old yearning of parents everywhere to give their children better lives." *Id.*

Mexico is just of one of many countries from which visitors now come to claim birthright citizenship. "Women from Mexico are not the only foreigners coming to the United States to give birth. Although there are no solid figures, expectant mothers routinely obtain tourist visas and travel to America from as far away as Hong Kong and Korea." *Id.* Indeed, "[a]n entire cottage industry now caters to people from South Korea, China, the Middle East and elsewhere who visit the United States just to give birth and then go back home. Once the child reaches 21, he can petition to have his families outside the country join him legally in the United States. These children are called 'anchor babies.'" "Immigration: Stop the Abuse," *Florida Times-Union (Jacksonville, Fla.)*, April 4, 2003, at B-4. The overall numbers are largely unknown, but some estimates are that anchor babies exceed 200,000 each year. This website even promotes travel to the United States by Koreans to give birth to American citizens: http://www.birthinusa.com.

The Constitution surely does not require allowing this exploitation by foreigners who reject American sovereignty. The Fourteenth Amendment does not mandate this disdain of the legal procedures for immigrating to this country. England changed its rule enabling birthright citizenship nearly twenty years ago. *See* British Nationality Act 1981, ch. 61, 1(1) (Eng.) (limiting citizenship to offspring of citizens and of aliens in the United Kingdom who have legally settled there). England does not grant citizenship to the offspring of non-settled or illegal aliens who do not spend the first ten years of their lives there, as Hamdi apparently did not spend here. *Id.* 1(4). A claim for constitutional birthright citizenship cannot

rest on English law when that country has itself so clearly rejected the notion.

The costs of birthright citizenship would be staggering. Already, California medical programs pay an estimated $852 million annually to cover illegal aliens. *Clayworth v. Bonta*, 295 F. Supp. 2d 1110, 1114 n.1 (E.D. Cal. 2003). Granting constitutional protection for birthright citizenship would accelerate the fiscal hemorrhaging. It would render the federal government powerless to stem the tide of illegal immigration and its staggering costs. Riee University economist Dr. Donald Huddle estimated that illegal aliens cost $5.4 billion in public assistance—back in 1990. Shari B. Fallek, "Comment: Health Care for Illegal Aliens: Why It Is a Necessity," 19 Houston J. Int'l L. 951, 957 (Spring 1997). "For the decade from 1993 to 2002, he estimated that the net cost for illegal immigrants would be $186.4 billion. Between 1993 and 2002, illegal immigrants will cost $221.5 billion in public assistance and displacement costs. Regarding jobs, Dr. Huddle suggested that in 1992, 2.07 million U.S. workers were displaced from jobs by immigrants, which cost $11.9 billion. He estimated the cost of job displacement for the 1993-2002 decade to be $171.5 billion." *Id.* 957-58.

It would be an absurd triumph of form over substance to require citizenship to be beholden entirely to the place of birth. In an increasingly mobile society, the location of birth conveys nothing about the desire of the sovereign to grant citizenship and little about the person. A constitutional amendment is not necessary to adhere to principles of citizenship existing from the days of the Roman Empire: a set of obligations and rights conferred by a people upon those whom a sovereign chooses. Citizenship must not be manipulated based on a travel itinerary; rather, it is a function of consent between the sovereign and the subjects.

CONCLUSION

"Citizenship is a privilege not due of common right. One who lays claim to it as his, and does this in justification or excuse of an act otherwise illegal, may fairly be called upon to prove his title good." *Morrison v. California*, 291 U.S. 82, 89 (1934). Hamdi's petition should be denied for lack of proof of citizenship.

Respectfully submitted,

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March 29, 2004